

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District <u>Minnesota</u>
Name (under which you were convicted): <u>Curtis Harrell</u>		Docket or Case No.: <u>19-CR-0070 (PJS/KMM)</u>
Place of Confinement: <u>Sherburne County</u>		Prisoner No.: <u>21957-041</u>
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) <u>Curtis Harrell</u>

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

United States District Court Minnesota

- (b) Criminal docket or case number (if you know): 19-CR-0070 (PJS/KMM)

2. (a) Date of the judgment of conviction (if you know): 5-2-2022

- (b) Date of sentencing: 7-12-2021

3. Length of sentence: 210 Months

4. Nature of crime (all counts): Felon in possession of firearm 922(g) and 924(e)



5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

- (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

N/A

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U.S. DISTRICT COURT
MINNEAPOLIS MINNESOTA

Motion to Vacate, Set Aside, or Correct a Sentence By a Person in Federal Custody

(Motion Under 28 U.S.C. § 2255)

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:

United States District Court, District of Minnesota Clerk's Office
U.S. Courthouse
300 South Fourth Street, Suite 202
Minneapolis, MN 55415
(612) 664-5000
9. **CAUTION:** You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.
10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:

- (a) Name of court: *United States District Court Minnesota*
- (b) Docket or case number (if you know): *19-CR-0070 L PJS/KMM*
- (c) Result: *My direct appeal got denied*
- (d) Date of result (if you know): *May 2nd 2022*
- (e) Citation to the case (if you know):
- (f) Grounds raised:

*Sentencing Effective counsel
My pretrials don't add up I don't have
three pretrials*

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know):
- (2) Result:
- (3) Date of result (if you know):
- (4) Citation to the case (if you know):
- (5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

Sentencing my own predicate parent violent
Effective counsel

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

my lawyer didnt put in what I wanted too argue
and I never went too court too see what happened

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

my sentencing I was over sentenced I never discharged
my gun are used it it wasnt mine Effective counsel
my lawyer put in no motions I wanted too argue
my attempted aggrob is not a predicate for
all a my 1st degree and 2nd degree assault I
took pleas on same day my 2nd degree assault
I had no victim so it is not a predicate
and Im in Sherburne county Jail segration I need a
Lawyer I dont know how too do this

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

my lawyer said I couldnt raise this issue he said
I only can appeal my sentence that why I got rid of him

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☒ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

my lawyer I got from public defender said I only can argue my sentence he said I couldn't argue all my issues that he said I had to be pro se on 2255 too address my issues he played me too get me denied

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I only have one predicate my attempted ass rub and my 2nd degree assault is not a violent offense my lawyer lied in court saying I won't have appeal issues the prosecutor lied and said he would give me a downward departure if I got a sentence for my phys eval

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

my lawyer the state gave me Rob Meyers refused to argue my issues I didn't know how to do it myself

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

United States District Court

Docket or case number (if you know):

Date of the court's decision: May 2nd 2022

Result (attach a copy of the court's opinion or order, if available):

Direct appeal denied

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☒ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

United District Court

Docket or case number (if you know):

Date of the court's decision: May 2nd 2022

Result (attach a copy of the court's opinion or order, if available):

Direct appeal denied because my lawyer appealed what he wanted but appeals not what I wanted he left me pro se to file all my issues and I have a TBI injury and I am a vulnerable adult I don't know how to do this and I am stuck in Sherburne County hole

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Because my lawyer wouldn't argue it he working with the prosecutor he only appealed my sentence behind my back all the issues I wanted to appeal he refused too no I am a vulnerable adult I have a TB injury I don't know law I need a lawyer to do this

GROUND THREE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

attempted aggr rob is not a violent predicate and my 2nd degree assault is not a predicate I have no victim and my 1st degree and 2nd degree assault I caught on same day and took a deal On the same day I caused no fear on my 2nd degree assault on my aggr rob I was with someone who got killed I had no knowledge of robbery

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

my lawyer Rob Myers refused to argue on my direct appeal he knew I was gonna get denied and have to file a 2255 with no lawyer

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☒ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

United States District Court

Docket or case number (if you know):

Date of the court's decision: May 2nd 2022

Result (attach a copy of the court's opinion or order, if available):

Direct appeal denied

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Because my public defender Rob Meyer refused to argue my appeal issues he said he only argues what he wants too argue behind my back he argued my sentencing then removed off my case after he knew I was gonna get denied

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

My attempted ass is not a predicate under ACCA my 2nd degree assault have no victim and my 1st degree and 2nd degree I did at same time I went on a crime spree under the influence of drugs I had no time too think so since I was under the influence of pcp I took deal for my 1st degree and 2nd degree assault on the same day my attempted ass rob I took nothing I had no knowledge of a robbery my friend got killed I am a victim

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

my lawyer Rob Meyers refused to argue my issues
he said he's only arguing what he wants

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision: May 2nd 2021

Result (attach a copy of the court's opinion or order, if available):

Direct appeal denied

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☒ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

United States Court

Docket or case number (if you know): 19-cr-00106 PJS/KMM

Date of the court's decision: May 2nd 2021

Result (attach a copy of the court's opinion or order, if available):

Direct appeal denied

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

my lawyer Rob Meyer refused to appeal my issues
he said he only appeal what he wants He knew I was
going get denied and not have a lawyer on my 2255

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

my attempted aggs Rob is not a predicate for accg my
1st and 2nd degree assault happened when I went on a
week long crime spree off PCP drugs I had no way
to stop my crime spree my lawyers refused to argue
these issues

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court

for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

Pat Leech

(b) At arraignment and plea:

Pat Leech

(c) At trial:

(d) At sentencing: Pat Leech

6465 Wayzata Boulevard suite 115
St. Louis Park, MN 55426

(e) On appeal: **Rob Meyers**
 Federal Defender District of Minnesota
 300 South Fourth Street Suite 107 US Courthouse
 (f) In any post-conviction proceeding: **mpls, MN 55415-1329**

NO
 (g) On appeal from any ruling against you in a post-conviction proceeding:
NO

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on
(month, date, year).

Executed (signed) on 3/30/23 (date).

Curtis Harrell

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.